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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

JUSTICE, FREEDOM AND SECURITY IN EUROPE SINCE 2005:

AN EVALUATION OF THE HAGUE PROGRAMME AND ACTION PLAN

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I. INTRODUCTION

Justice, freedom and security are the foundations of a prosperous and peaceful Europe. Building the capacity needed to safeguard these fundamental values is a long term project. Europe also needs the flexibility to respond to unexpected and at times tragic events, such as the terrorist attacks on London in 2005 or the deaths over the past decade of thousands of immigrants seeking to enter EU territory by the Mediterranean Sea. The EU's policies in this area frame how its institutions, Member States and citizens interact with one another and on the international stage.

The Hague Programme¹ has been the EU's blueprint for realising its vision in the areas of access to justice, international protection, migration and border control, terrorism and organised crime, police and judicial cooperation and mutual recognition.

The Commission has carefully monitored the implementation of the Programme at EU and Member State level.² Individual instruments have been evaluated by the Commission or by Member States through peer reviews. Drawing from these exercises, this communication highlights the principal themes which have emerged, and looks ahead to how the EU should respond to the challenges of the future. Three longer documents accompany the communication: first, a report on the implementation of the programme which details, policy-by-policy, objectives, significant developments and future challenges; second, an 'institutional scoreboard' which provides an overview of the programme's stated instruments and targets; and third, an 'implementation scoreboard' on implementation at national level.

The priorities for building on what has been achieved will be set out in the next multiannual programme (the Stockholm Programme).³

II. BACKGROUND AND CONTEXT

The Tampere European Council in 1999 set down the first multi-annual policy framework for the area of justice and home affairs. During the subsequent five years, the foundations were laid for a common asylum and immigration policy, for the harmonisation of border controls, and for closer police and judicial cooperation based on mutual trust and recognition. This period witnessed the terrorist attacks on New York in 2001 and Madrid in 2004, the pressures of increasing migratory flows and the growing threat of organised crime. These events reinforced Europe's need for an ongoing strategy to tackle cross-border challenges whilst upholding fully the fundamental rights of the citizen.

The Hague Programme was the EU's response to this need. Its objectives were:

- *to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice;*

¹ The Hague Programme: strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1), and the Council and Commission action plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12.8.2005, p. 1).

² A Commission review of the progress made in the implementation of the Hague Programme by the European Institution and by Member States ("Scoreboard") has been presented every year since 2006. The references are as follows: COM(2006) 333 final; COM(2007) 373 final; COM(2008) 373 final.

³ COM(2009)262

- *to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need;*
- *to regulate migration flows and to control the external borders of the Union;*
- *to fight organised cross-border crime and repress the threat of terrorism;*
- *to realise the potential of Europol and Eurojust;*
- *to carry further the mutual recognition of judicial decisions and certificates both in civil and in criminal matters; and*
- *to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications.*

Significant developments within the EU and globally have formed the backdrop to the implementation of the programme. The accession of 12 more Member States in 2004 and 2007 transformed the Union and how it functions. Asylum applications fell before starting to rise again in 2007, while migratory pressures on the southern external border of the EU have grown markedly. Already confronted by a decline in the working age population over the long term, Europe's economy now faces a period of rising unemployment and economic uncertainty.

III. AN AMBITIOUS PROGRAMME WITH VISIBLE ACHIEVEMENTS

Europe-wide initiatives in the area of justice, freedom and security are new in comparison with other activities of the EU, and many of them will take a while to bear fruit. These initiatives have a direct impact on peoples' lives, and according to opinion surveys EU citizens have high expectations. As with Tampere, the Hague Programme adopted a long term perspective, but it went further in that its strategic aims were accompanied by a detailed action plan for delivering them. Progress has been mixed, but there have been visible achievements.

III.1. Strengthening freedom

III.1.1 Protection of fundamental rights

A systematic and rigorous monitoring system was put in place⁴ ensuring that the Commission's legislative proposals are fully compatible with the Charter of Fundamental Rights. The Fundamental Rights Agency⁵ opened its doors on 1 March 2007 and is now assisting EU institutions and Member States through research projects and data collation. A comprehensive approach for promoting the rights of the child was launched,⁶ leading to the establishment of the European Forum for the Rights of the Child. The forum provides the opportunity for all interested parties to work together to put children's rights at the heart of all

⁴ 'Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring', COM(2005) 172 final.

⁵ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, p. 1.

⁶ 'Towards an EU strategy on the rights of the child ', COM(2006) 367 final.

the EU's activities. The EU adopted a framework decision requiring Member States to sanction those who incite racist violence or hatred.⁷

In both its internal and external policies, the EU promoted respect for the right to protection of personal data and privacy while recognising the need for law enforcement authorities to exchange relevant information in the fight against terrorism and serious crime. Further guarantees have been achieved for the protection of personal data processed within the framework of police and judicial cooperation in criminal matters.⁸ As a result of the Data Protection Directive,⁹ the Commission has reported, individuals are protected against general surveillance, consumers are confident that details provided for transactions will not be misused, and businesses can operate in the EU without fearing disruption of their international activities.¹⁰ Privacy enhancing technologies¹¹ were promoted for designing information systems which keep the collection and use of personal data to a minimum. Working with third countries, the EU reached a long term agreement with the United States, Canada and Australia on the transfer of Passenger Name Records, and guarantees have been secured on the use of personal data originating in the EU and held by the processing body SWIFT for the purposes of fighting terrorism.

III.1.2 Citizenship of the Union

The lifting of controls at internal borders in the Schengen area of twenty-five countries has enabled people to travel from the Iberian Peninsula to the Baltic States and from Greece to Finland without having to go through any border checks. This potentially benefits over 400 million EU citizens,¹² and implies that Member States trust in each other's ability to guard effectively the external borders on behalf of the EU and to issue visas valid for the whole Schengen area.

In April 2006 the directive on the right of citizens of the Union to move and reside freely within the Member States entered into force.¹³ Overall transposition to date has been disappointing,¹⁴ and the Commission is stepping up its efforts to ensure that EU citizens and their families are able to enjoy fully their rights under this landmark directive.

⁷ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55.

⁸ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

¹⁰ 'Communication from the Commission to the European Parliament and the Council on the follow-up of the Work Programme for better implementation of the Data Protection Directive', COM(2007) 87 final.

¹¹ 'Communication from the Commission to the European Parliament and the Council on Promoting Data Protection by Privacy Enhancing Technologies (PETs)', COM(2007) 228 final.

¹² The total population of the 25 Schengen Member States is 411,310,500 (Estimation: Eurostat 2009).

¹³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

¹⁴ 'Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States', COM(2008) 840 final.

A series of measures have been proposed to make the right of EU citizens to consular protection a reality.¹⁵ An estimated 8.7% of EU citizens, or 7 million people, travelling outside the EU do so to countries where their Member State is not represented. A further 2 million EU citizens live in such countries. The action plan for 2007-2009¹⁶ aimed to address current and foreseeable shortcomings in this area.

III.1.3 The Common European Asylum System

The Common European Asylum System is a powerful statement of our values, our respect for human dignity and our commitment to shared responsibility. The first phase of this system set down common minimum standards which, in accordance with the Treaty of Nice, allowed for the transition to co-decision and qualified majority voting. Under the Hague Programme, after a wide consultation,¹⁷ the system started to move into its second phase of development with the adoption in 2008 of a policy plan.¹⁸ Amendments to the Reception Conditions Directive and to the Dublin and Eurodac Regulations have already been proposed as part of this plan. Operational experience has consistently pointed to the need for practical cooperation, and in the proposed establishment of the Asylum Support Office the EU sought a coherent and efficient means of responding to these challenges. With regard to the external dimension, Pilot Regional Protection Programmes were established in a number of third countries to increase their protection capacities.

III.1.4 Migration and integration

The EU worked to improve the management of migration flows and to coordinate national integration policies. Minimum standards of fairness, consistency and certainty were established, and efforts were made to harness the untapped employment potential of third-country nationals already resident in EU whilst preventing the adverse effects of 'brain drain' in source countries.

On the basis of a green paper,¹⁹ a policy plan²⁰ set out the initiatives to be taken on legal migration between 2006 and 2009. As part of the implementation of this plan, conditions were set down for the entry, employment and residence of third-country nationals,²¹ and the 'Blue Card' will soon become a reality.²²

Maximising the economic benefit of legal migration was accompanied by concerted efforts to combat illegal migration and those who profit from human smuggling and trafficking. Illegal

¹⁵ Green Paper 'Diplomatic and consular protection of Union citizens in third countries', COM(2006) 712 final.

¹⁶ 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009, COM(2007) 767 final.

¹⁷ Green Paper on the future of the Common European Asylum System, COM(2007) 301 final.

¹⁸ 'Policy plan on asylum - An integrated approach to protection across the EU', COM(2008) 360 final.

¹⁹ Green Paper on an EU approach to managing economic migration, COM (2004) 811 final.

²⁰ 'Policy Plan on Legal Migration', COM(2005) 669 final.

²¹ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM(2007) 638 final.

²² The proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM(2007) 637 final, has been adopted by the Council on 25.5.2009

migration is not increasing in the EU as a whole, but Mediterranean Member States are shouldering an increasing share of the burden. Particularly worrying is the number of people arriving after dangerous sea crossings.²³ The opportunity of illegal employment results in exploitation of the individual and distorting effects on the EU economy. The Commission's proposal for a directive providing for sanctions against employers of illegally-staying third-country nationals was expected to be adopted in the first semester of 2009.²⁴ This will send a clear signal that the EU will not tolerate illegal migration, especially where it is encouraged by unscrupulous employers.

Common principles and a framework for the integration of third-country nationals²⁵ were established, including handbooks on integration for policy-makers and practitioners, a one-stop-shop European website on integration and a European Integration Forum. Member States efforts within this common agenda are being supported by the European Fund for Integration,²⁶ with €825 million allocated for the period 2007-2013.

Overall, the Commission's Communication on a Common Immigration Policy for Europe,²⁷ and the European Pact on Immigration and Asylum²⁸ which followed shortly after, brought together 10 years of work and laid the ground for a coherent approach in the future.

III.1.5 Border management

Managed migration requires secure borders. There are 1636 designated points of entry to the EU's territory. In 2006 there were an estimated 900 million external border crossings and 8 million illegal immigrants in the EU-25. In the same year 500,000 illegal immigrants were apprehended in the EU of whom 40% were subsequently returned.

FRONTEX, the agency for coordinating border control cooperation between Member States, has been instrumental to the EU's response to these challenges. From 2005 to 2008, it conducted 50 joint operations and 23 pilot projects involving several Member States. The Schengen Borders Code²⁹ became effective in all EU Member States and set down standards and procedures they have to follow in controlling the movement of persons across internal and external EU borders. A package of Commission proposals laid down new milestones for progress towards integrated border management: an entry-exit system³⁰ through automatic alerts where someone overstays his/her visa, a system for the surveillance of the EU's southern and eastern external borders (known as EUROSUR)³¹ and the evaluation and future

²³ 'Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents', SEC(2009) 320.

²⁴ Proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final.

²⁵ 'Common Basic Principles', Council document 14615/04, p. 15; 'A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union', COM(2005) 389 final.

²⁶ Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 168, 28.6.2007, p. 18.

²⁷ 'A common immigration policy for Europe: Principles, actions and tools', COM(2008) 359 final.

²⁸ 'European Pact on Immigration and Asylum', Council document 13440/08.

²⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

³⁰ 'Preparing the next steps in border management in the European Union', COM(2008) 69 final.

³¹ 'Examining the creation of a European border surveillance system (EUROSUR)', COM(2008) 68 final.

development of FRONTEX.³² The Return Directive³³ provided for effective and humane standards in the return of illegal immigrants.

New technologies are being exploited in the development of a modern, integrated border management system. Biometric passports were introduced in 2006. The second generation of the Schengen Information System and the Visa Information System is under development and their legal framework has been established. These systems will allow increased use of new technologies, especially biometrics, and so contribute to the security of the Schengen area whilst ensuring that data protection requirements are fully respected.

III.1.6 Visa policy

A legislative framework for the implementation and operation of the Visa Information System (VIS) was adopted in 2008³⁴ facilitating checks at external border crossing points and the exchange of visa data between Member States. The Commission proposed the creation of a legal basis for Member States to take mandatory biometric identifiers from visa applicants and to give a legal framework for the organisation of Member States consular offices.³⁵ The Common Consular Instructions were recast, and a Visa Code proposed,³⁶ to increase transparency, harmonisation of procedures, and legal certainty. Visa facilitation agreements were negotiated with Russia, Ukraine, the Republic of Moldova, Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro. These agreements, which entered into force in 2007 and 2008, simplified procedures for citizens of these countries wishing to travel to the EU for short stays. Full visa reciprocity³⁷ was achieved with Costa Rica, Israel, Malaysia, Mexico, New Zealand, Nicaragua, Panama, Paraguay, Singapore, Uruguay and Venezuela, and progress was also made with Australia, Brunei Darussalam, Canada and the United States. The proposal for the creation of common visa application centres³⁸ awaits adoption, with two pilot centres already established.

³² 'Report on the evaluation and future development of the FRONTEX Agency', COM(2008) 67 final.

³³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

³⁴ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60; and Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

³⁵ Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications, COM(2006) 269 final.

³⁶ Draft proposal for a Regulation of the European Parliament and of the Council establishing a Community Code on Visas, COM(2006) 403 final.

³⁷ Four "reciprocity reports" have been published: COM(2006) 3 final; COM(2006) 568 final; COM(2007) 533 final; COM(2008) 486 final/2.

³⁸ Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications, COM(2006) 269 final.

III.1.7 The external dimension of asylum and migration

Global problems require global solutions. The 'Global Approach' to migration, based on genuine partnership with third countries, demonstrated a commitment to taking the widest possible perspective of the drivers behind, and the consequences of, migration flows from third countries into the EU. Migration is now better integrated into the Commission's development agenda and the EU's other external policies. This reflected a major change from a primarily security-centred approach to one guided by a deeper understanding of all aspects relevant to migration. Channels were opened for new partnerships and constructive dialogue with regions neighbouring the EU and with Africa, Asia and Latin America. These discussions were backed up with action on the ground, aiming at making migration and mobility positive forces for development, at better managing legal migration and at preventing and reducing illegal migration. Community cooperation instruments gave concrete expression to the Global Approach by funding many projects in these areas and in the area of refugee protection. The Thematic Programme on Migration and Asylum was established for this purpose with a budget of €384 million for 2007-2013. Meanwhile new tools and concepts were promoted, such as mobility partnerships between the EU and third countries.

III.2. Strengthening security

III.2.1 Terrorism

The Madrid and London bombings of 2004/5 represented the most shocking attacks in the EU in recent years. There have however also been an alarming number of other attempted attacks many of which went unnoticed. In 2007, almost 600 failed, foiled or successfully executed terrorist attacks were carried out in eleven EU Member States.³⁹

In terms of prevention, the EU funded several projects including a handbook for tackling radicalisation in prisons.. The directive on the prevention of the use of the financial system for terrorist financing extended the obligation to report on suspicious transactions to non-financial business including casinos and lawyers.⁴⁰ As a result of the regulation adopted in 2005, travellers entering or leaving the EU with €10,000 or more in cash are required to make a written declaration.⁴¹ The EU adopted legislation for the criminalisation of terrorist training and recruitment and of public provocation to commit terrorist offences, including over the Internet.⁴² Funds were allocated for the installation of an EU-wide Early Warning System to notify authorities of threats posed by missing or stolen explosives.

Instruments to enhance the protection of critical infrastructure in the EU – roads, railways, electricity networks and power stations – were put in place.⁴³ The Commission consulted on

³⁹ Europol, 'EU Terrorism Situation and Trend Report 2007', available at: <http://www.europol.europa.eu/publications/TESAT/TESAT2007.pdf>

⁴⁰ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15.

⁴¹ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, OJ L 309, 25.11.2005, p. 9.

⁴² Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, OJ L 330, 9.12.2008, p. 21.

⁴³ Communication from the Commission on a European Programme for Critical Infrastructure Protection, COM(786) final, and Council Directive 2008/114/EC of 8 December 2008 on the identification and

bio-preparedness by way of a Green Paper⁴⁴ and will soon put forward a package of proposals aiming at reducing the risk of chemical, biological, radiological and nuclear threats, which have the potential to harm thousands of people, to destroy agriculture and to damage severely the food supply chain.

III.2.2 Police cooperation

The EU's work during the past 5 years was predicated on the 'principle of availability' whereby a law enforcement officer from one Member State during the course of his duties can obtain information, where it is available, from another Member State.

The exchange of information and intelligence was simplified.⁴⁵ The incorporation of the Prüm Treaty into EU legislation⁴⁶ provided indirect access to Member States' databases on fingerprints and DNA information, and direct, controlled access to vehicle registration files. This is likely to improve considerably police cooperation throughout the EU by enabling them to know what information is available. Conditions for access for security purposes to the VIS were adopted,⁴⁷ while conditions for the retention of electronic communications traffic and location data⁴⁸ were transposed by most Member States in relation to fixed telephone networks and mobile telephony.

The Council Decision establishing the European Police Office (Europol) and replacing the former Convention will give the body greater operational flexibility to respond more rapidly to trends in crime.⁴⁹ Alongside its information system, designed to collect data relating to serious cross border crime and to allow for its exchange, Europol's Analytical Work Files are tools to provide law enforcement services in Member States with relevant intelligence on specific criminal phenomena, including trafficking in human beings, terrorism, credit card fraud and synthetic drugs trafficking.

III.2.3 Organised crime

Threats to the EU come from organised crime gangs' involvement in drugs, stolen vehicles, robbery and high tech crime such as identity theft. These along with financial crimes - fraud,

designation of European critical infrastructures and the assessment of the need to improve their protection, OJ L 345, 23.12.2008, p. 75.

⁴⁴ Green Paper on bio-preparedness, COM(2007) 399 final.

⁴⁵ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.

⁴⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 1 and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 12.

⁴⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

⁴⁸ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105, 13.4.2006, p. 54.

⁴⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

counterfeiting, money laundering - all generate large profits and are harmful to the EU's economy. The establishment of national asset recovery offices for faster EU-wide tracing of funds⁵⁰ has been encouraged and an intelligence-led approach was promoted in view of tackling these threats. On money laundering, FIU.NET has been established. This decentralised computer network connects EU Financial Intelligence Units to exchange efficiently financial intelligence information. A new instrument on the fight against organised crime⁵¹ allows for further cooperation between Member States. The Commission in May 2007 proposed a series of measures for better coordination in the fight against cyber crime,⁵² both among law enforcement authorities and between them and the private sector. Cyber crime is at times synonymous with the exploitation of children. The establishment of the Financial Coalition against Child Pornography enables the Commission, credit card issuers, law enforcement bodies and internet service companies to work together to eliminate commercial child pornography by taking action on the payment systems used to fund these illegal operations. The Commission put forward a framework decision for strengthening actions to prevent and combat child exploitation in spring 2009, alongside a proposal for a framework decision on trafficking in human beings following up the 2005 action plan.⁵³

III.2.4 European Strategy on Drugs

The EU Drugs Strategy (2005-2012)⁵⁴ and action plans⁵⁵ set out a balanced and integrated approach involving prevention of drug abuse, assistance and rehabilitation of those dependent on drugs, combating illegal drug trafficking, the control of precursors, money laundering, and the strengthening of international cooperation. Evidence gathered by the European Monitoring Centre on Drugs and Drug Addiction shows that the use of heroin, cannabis and synthetic drugs has stabilised, but that cocaine use is rising in several Member States. The EU is addressing the complex social phenomenon of widespread substance use and abuse in the population, and is increasingly focusing on measures to address the harm caused by drugs to individuals and society.

III.3. Strengthening justice

Under the Hague Programme, the development of a 'European area for justice' started to deliver results for Member States and EU citizens. Eurojust and the European Judicial Networks provide the infrastructure for judicial cooperation and the coordination of investigations and prosecutions across internal borders. In civil matters, directly applicable regulations allow citizens and businesses involved in cross border legal disputes to know

⁵⁰ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103.

⁵¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.

⁵² 'Towards a general policy on the fight against cyber crime', COM(2007) 267 final.

⁵³ Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, COM(2009) 315 final; proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM(2009) 316 final.

⁵⁴ EU Drugs Strategy (2005-2012) endorsed by the Council in 2004, Council Document 15074/04.

⁵⁵ On the basis of the Communication on a EU Drugs Action Plan (2005-2008), COM(2005) 45 final, the Council endorsed the 'EU drugs action plan (2005-2008)' in 2005, OJ C 168, 8.7.2005, p. 1. On the basis of the Communication on a EU Drugs Action Plan for 2009-2012, COM(2008) 567 final, the Council endorsed the 'EU Drugs Action Plan for 2009-2012', OJ C 326, 20.12.2008, p. 7.

which courts have jurisdiction, and what rules apply to the recognition of a judgment given in another Member State.

III.3.1 Judicial cooperation in criminal matters

The European Arrest Warrant cut substantially the time and effort required for criminals to be surrendered. Cases treated under the old extradition process often took over a year, now they take between 11 days and 6 weeks. In 2007, 2667 effective surrenders as a result of served warrants were reported, and in 2005 it was used to secure the rapid return of one of the London bombers from Italy to the UK. Member States relied increasingly on Eurojust when investigating and prosecuting serious crimes. In 2007 over 1000 cases were registered, compared to 192 in 2002.

III.3.2 Facilitating civil law procedure across borders

Significant progress was made in the civil and commercial justice sphere. EU citizens now have a simpler and quicker means for small claims and debts to be dealt with.⁵⁶ The EU brought in harmonised rules on the law applicable to civil liability and contracts.⁵⁷ Judicial cooperation was improved by revised rules on the service of documents.⁵⁸ Significant developments in the external aspects of judicial cooperation⁵⁹ included the accession of the EC to the Hague Conference of Private International Law,⁶⁰ and preparatory work undertaken by the Commission on how to improve the enforcement of judgments in the EU.⁶¹ Certain

⁵⁶ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

⁵⁷ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

⁵⁸ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79.

⁵⁹ Council Decisions 2006/325-326/EC concerning the conclusion of the Agreement between the European Community and Denmark, OJ L 120, 5.5.2006, p. 22 and p. 23; Council Decision 2007/712/EC of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the 'Lugano Convention'), OJ L 339, 21.12.2007, p. 1; and Council Decision 2008/431/EC of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law - Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, OJ L 151, 11.6.2008, p. 36.

⁶⁰ Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law, OJ L 297, 26.10.2006, p. 1..

⁶¹ 'Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters', COM(2006) 203 final; Green Paper 'Effective enforcement of judgments in the European Union: the transparency of debtors' assets ', COM (2008) 128 final; and Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts, COM(2006)618 final.

aspects of mediation in civil and commercial matters were addressed with the aim of promoting alternative means of resolving disputes.⁶²

A new regulation concerning matrimonial matters and parental responsibility ensured that children can maintain regular contacts with both parents following a separation, and provided clear rules to deter child abduction all over the EU. A further regulation, once ratified, will speed up the recovery of maintenance obligations in the EU.⁶³ A legislative proposal on the law applicable to divorce (known as 'Rome III') is being discussed in the Council and Parliament.

III.3.3 Mutual recognition

Mutual recognition is the cornerstone of judicial cooperation. The EU has made significant progress in this area at both legislative and operational levels. Through the implementation of the strategy and action plan on European e-Justice,⁶⁴ EU citizens will have access to information about services in EU justice area and communication and cooperation among judicial authorities will be facilitated. The Justice Forum, a platform for regular dialogue about policies and practice, should strengthen mutual trust, an essential ingredient for mutual recognition.

Effective cooperation begins with adequate training of the people working on the frontline. The Commission has prioritised the funding of judicial study, training and exchange programmes – the latter involving 400 judges and prosecutors in 2007 alone.

III.4. External relations

Internal and external policies in the area of justice freedom and security are inextricably linked. In the Hague Programme, the Commission and the Secretary-General/ High Representative were mandated to present to the Council a strategy covering all external aspects of EU policy on freedom, security and justice. This strategy,⁶⁵ endorsed in 2005 by the Council, set out thematic priorities, namely, human rights, addressing weak governance and state failure, judicial cooperation, counter-terrorism, organised crime, corruption, drugs and managing migration flows, together with a series of underlying principles and delivery mechanisms. Two progress reports on the strategy were produced.⁶⁶ These priorities were

⁶² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3..

⁶³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, p. 1.

⁶⁴ 'Towards a European e Justice Strategy', COM(2008) 329 final.

⁶⁵ 'Strategy for the external dimension of JHA: Global freedom, security and justice', Council document 15446/05.

⁶⁶ 'Progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice', SEC(2006) 1498; 'Second progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice', SEC(2008) 1971.

included in the 2003 European Security Strategy, which identified the key threats facing Europe. An implementation report was published in December 2008.⁶⁷

III.5. Financial instruments

Various financial instruments were created to support action at EU and Member State level. The Solidarity and Management of Migration Flows programme⁶⁸ supports immigration policy: almost €4 billion was allocated to migration issues for 2007-2013. The Security and Safeguarding Liberties programme⁶⁹ (€745 million for 2007-2013) helps the EU in pursuing its fight against terrorism and crime. The Fundamental Rights and Justice programme⁷⁰ (€542 million in total) contributes funds to the e-Justice Action Plan and the Daphne Programme (on violence against children, young people and women).

Under the 7th Community Framework Programme for Research and Technological Development, up to €1.5 billion is available to build capacity for protecting citizens, borders and infrastructure against terrorist and other threats. There are also funds available for socio-economic research into criminality and the protection of fundamental rights. The European Security Research and Innovation Forum (known as ESRIFF) was set up to bring together public and private partners to develop a joint agenda for civil security research and innovation over the mid- to long term.⁷¹

In the area of external aid, several financial instruments support the external dimension of justice, freedom and security: the Instrument for Pre-Accession, the European Neighbourhood and Partnership Instrument, the Instrument for Stability, the European Development Fund and the Development Cooperation Instrument, which includes the Thematic Programme on Migration and Asylum.

IV. MIXED PROGRESS IN SOME AREAS

There have been considerable advances towards realising many of the ambitions set out in the Hague Programme, and most of the specific measures it envisaged have been adopted. The full fruits of many of these measures will only become apparent in the longer term. Nevertheless, progress in certain areas remains mixed or limited.

This uneven progress can be to a large extent explained by the unique challenges faced by the JLS area: a relatively young *acquis*, an insufficient role of the European Parliament in certain policy areas, a limited jurisdiction of the European Court of Justice and a limited competence of Commission to bring infringement, and the requirement for unanimity for decision-making

⁶⁷ 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Council document 17104/08.

⁶⁸ Four Funds exist under this programme: three Funds adopted under co-decision procedure (European Return Fund, European Refugee Fund and External Borders Fund) and one Fund under consultation procedure (Fund for the Integration of third-country nationals).

⁶⁹ Two specific programmes exist under this framework programme: "Prevention of and fight against Crime" (third pillar legal basis) and "Prevention, preparedness and Consequence Management of Terrorism and other Security related risks" (based on Article 308 of the TEC).

⁷⁰ This framework programme has five specific programmes: Civil Justice, Daphne III and Drugs programmes (under co-decision), Fundamental Rights and Citizenship (based in Article 308 TEC) and Criminal Justice (third pillar legal basis).

⁷¹ 'Communication from the Commission to the European Parliament and the Council on Public-Private Dialogue in Security Research and Innovation', COM(2007) 511 final.

in several areas. Therefore the ambition of measures was often scaled down in certain areas such as legal migration.

Several elements of the Hague Programme which have not been delivered can be clearly attributed to the failure to ratify the Constitutional Treaty. The accession of the European Union to the European Convention on Human Rights has not been possible without the legal basis the Constitutional Treaty would have provided, and which the Lisbon Treaty would provide should it come into force.

Progress was comparatively slow in mutual recognition in criminal matters and police cooperation. The decision making process falling under the so-called 'third pillar' method (Title VI TEU) requires unanimity. This often leads to lengthy inconclusive discussions or ambitious proposals being reduced to agreement around lowest-common-denominator texts. A framework decision on procedural rights is one example of a proposal envisaged by the Hague Programme which was not adopted despite the importance attached to it by practitioners throughout Europe.

In addition, for legislative instruments in the third pillar (Common Positions, Framework Decisions, Decisions and Conventions), the lack of recourse to formal infringement procedures for ensuring proper transposition, and at times significant delays in the transposition of EU instruments at national level have resulted to some degree in a 'virtual' legislative framework with little or no benefit for the EU citizen.

V. LESSONS LEARNED, THEMES FOR FUTURE ACTION

The EU needs to learn from past action, making full use of successful strategies and correcting what could have been done better. The following themes should guide our future work across justice, freedom and security policies.

V.1. Joined-up thinking and action

The big issues facing Europe, whether short term crises or long term trends, demand joined-up planning and action. Justice, freedom and security are each of relevance to all individual aspects of the Hague Programme. Consistency across the various policy areas is essential, not only within the traditional sphere of justice and home affairs activity, but also across the whole range of Community policies.

In migration and asylum, policies aiming to prevent and tackle irregular immigration and abuses of the asylum system must not hamper access to the protection to which asylum-seekers are entitled. Fundamental rights-proofing of EU policies must continue and be extended to all stages of decision making and implementation by Member States of EU legislative *acquis*. Border management is vital for the security of the EU, as is police cooperation in relation to fighting illegal immigration. Cross-cutting priorities for the EU should be identified in these areas.

The protection of personal data in the framework of police and judicial cooperation in criminal matters has been the result of a case-by-case approach. Data protection requirements have been laid down in a variety of legislative texts, across the pillars, and their scope and nature depend on the objectives of the individual legislative texts. The recently adopted

Framework Decision⁷² does not completely solve this lack of harmonisation. Achieving consistency in this area therefore deserves particular attention in the years to come.

Other cross-cutting approaches could improve the effectiveness of our policies, such as the rights of the child and combating xenophobia and racism, whose threat sadly often mounts in times of economic crisis.

The Global Approach to Migration consists of various instruments which could be integrated under a comprehensive and balanced framework for dialogue and cooperation. New challenges need to be tackled in a systematic way. Political, economic, environmental and demographic changes over the long term affect the EU's relationships with third countries, with significant impact on migration and mobility. Migration policy must be further integrated into the EU's external relations strategy, assisted potentially by the establishment of an External Action Service.

We need to exploit fully the opportunities presented by new technologies. The information society has also created the need for a high level of network and information security throughout Europe. The fight against cyber crime and cyber terrorism requires stakeholders to be closely involved in efforts to enhance the level of preparedness, security and resilience of ICT infrastructures and services. These long-term challenges demand careful consideration on a European level.⁷³

The security research and innovation agenda must be taken forward in partnership with the private and public sectors and with the full participation of end-user organisations.

V.2. Further attention to implementation and enforcement

It is of concern that the success in adopting measures in the Hague Programme and Action Plan contrasts with the mixed record in national implementation. Now that a substantial legal framework is in place, the focus of future action should be on consolidation and enforcement. The Commission can assist in this by consolidating existing *acquis*, facilitating coordination and exchange of best practises between Member States such as through implementation seminars, and by providing financial support and encouraging training. Greater use of infringement proceedings should also be envisaged. The Commission has promoted the right of the EU citizen to move and reside freely in the territory of the EU, but more work is needed to ensure that EU citizens are aware of their rights and can be confident that they will be respected. Existing agencies and networks need to realise their full potential, cooperate with each other more and exploit potential synergies.

V.3. Improving the use of evaluation

Citizens expect to see results from EU policies. Many instruments have been adopted and many agencies established under the Hague Programme. In many cases it is too soon to assess their effectiveness in terms of concrete results. Measures taken in the fight against organised

⁷² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

⁷³ 'Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience', COM(2009) 149 final.

crime, in police and customs cooperation and in criminal justice remain difficult to evaluate as often there is no formal duty for Member States to report on implementation.

More robust and systematic monitoring and evaluation systems for each policy are needed to provide comparable evidence on the impact of what the EU does. Evaluation results will then inform better policy-making and help explain to EU citizens the added value of EU action.

Better evaluation depends on the availability of up-to-date, objective, reliable and comparable data. For example, in migration there are now common rules for Community statistics⁷⁴ and an established European Migration Network. Similarly, the Commission with Member States has developed parameters for collecting, analysing and comparing data and trends in trafficking in human beings and money laundering. However, in many areas such as justice data has been unavailable. Even where data collection systems are in place or are being created, including for crime and specifically for drugs, consideration should be given to more binding provisions. Funding under the Research and Technological Development Framework Programme and other relevant programmes should continue to help develop knowledge in this policy area.

The credibility of the next multiannual programme will depend on the extent to which the EU can report meaningfully on its effectiveness.

V.4. Complementing our internal policies through external action

Member States, the Council and the Commission need to work together to strengthen partnerships with third parties. Continuity and consistency between internal and external European justice, freedom and security policies are essential to produce results and to meet the challenges posed by globalisation. The EU needs to anticipate challenges rather than wait for them to reach our borders, and it should promote standards, such as those for data protection, which can be regarded internationally as examples worth following. The external dimension of JLS policies needs to be fully integrated and coherent with EU external action and policies such as development cooperation.

Increasingly, third countries approach the EU for cooperation on the basis of specific agreements. These approaches may require prioritisation. Consideration should be given to identifying criteria for deciding how to respond to these approaches and whether to include them within an overall framework of a comprehensive agreement. Cooperation initiatives should respond to the particular circumstances of the countries which are preparing to join the EU. External relations priorities of the Union should also better inform and guide the prioritisation of the work of agencies such as Europol, Eurojust and Frontex. The agencies' operational knowledge, particularly where they have concluded agreements or working arrangements with third countries, in addition to their annual reports, could provide valuable input into decision-making at EU level.

⁷⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31.7.2007, p. 23.

VI. LONG LASTING CHALLENGES REQUIRING LONG TERM ACTION

In autumn 2008 the Commission carried out a public consultation on what should be Europe's future priorities in the area of justice, freedom and security.⁷⁵ Many responses were received from individual citizens, civil society and Member States. This followed the valuable and in-depth considerations of the 'Future Groups' composed of ministers from number of Member States.⁷⁶

The conclusions are clear.

EU citizens want to live in a place where their rights are respected and their safety is protected. They want to be able to travel freely, and to choose to stay temporarily or permanently in another European country, whether it is to study, work or start a family. A large majority of EU citizens would like to see the EU playing an even greater role in areas such as the fight against organised crime and trafficking, action against terrorism, the exchange of police and judicial information between Member States, the fight against drug abuse, the promotion and protection of fundamental rights, the control of external borders, and asylum and migration policy.

The working age population of the EU is projected to decline by 15%, or almost 50 million, by 2060 compared to 2008 figures. In 2007, 18.8 million third-country nationals were resident in the EU27, 3.8% of the total population.⁷⁷ This trend is set to continue with migratory pressures likely to increase for the foreseeable future. There can be no going back to tackling immigration in isolation.

The EU can be justly proud of its achievements to date. Despite the relatively short period of time in which it was developed, the strength of the Hague Programme lay in its longer term perspective. The challenge for future years is to maintain the momentum and build on these successes, learning from experience. Europe must find a united response in the interests of the citizen to these long-lasting challenges.

⁷⁵ Flash Eurobarometer 252, 'Awareness of key-policies in the area of Freedom, Security and Justice'; the contributions to and the results of the public consultation are available at: http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0001_en.

⁷⁶ 'Freedom, Security, Privacy – European Home Affairs in an open world: Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy', June 2008; 'Proposed Solutions for the Future EU Justice Programme: High-Level Advisory Group on the Future of European Justice Policy', June 2008.

⁷⁷ Eurostat, EUROPOP 2008 Convergence Scenario; Eurostat, Migration Statistics.